

ORIGINAL

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7  
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9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA, ) Case No. 11CP4767-GT  
12 )  
Plaintiff, )  
13 )  
v. ) PLEA AGREEMENT  
14 CARLOS BRAVO-AVENDANDO, ) (Fast Track)  
15 )  
Defendant. )  
16 )

17 IT IS HEREBY AGREED between the plaintiff, UNITED STATES OF  
18 AMERICA, through its counsel, Laura E. Duffy, United States Attorney,  
19 and Emily J. Keifer, Assistant United States Attorney, and defendant,  
20 CARLOS BRAVO-AVENDANDO, with the advice and consent of RoseMarie  
21 Maliekel, counsel for defendant, as follows:

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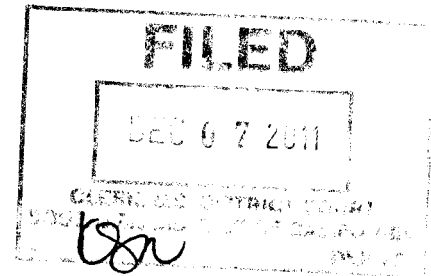
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Def. Initials C.B.A.  
11CR 4767-GT

I

THE PLEA

A. The Charge. Defendant agrees to waive Indictment and plead guilty to a single-count Information charging that:

On or about October 2, 2011, within the Southern District of California, defendant CARLOS BRAVO-AVENDANDO, an alien, who previously had been excluded, deported and removed from the United States to Mexico, was found in the United States, without the Attorney General of the United States or his designated successor, the Secretary of the Department of Homeland Security (Title 6, United States Code, Sections 202(3) and (4), and 557), having expressly consented to the defendant's reapplication for admission to the United States; in violation of Title 8, United States Code, Section 1326(a) and (b).

It is further alleged that defendant was removed from the United States subsequent to March 29, 2006.

B. Early Disposition (Fast-Track) Program. The disposition contemplated by this plea agreement is pursuant to an early disposition (Fast-Track) program authorized by the Attorney General of the United States and the United States Attorney for the Southern District of California.

II

NATURE OF THE OFFENSE

A. ELEMENTS EXPLAINED

Defendant understands that the offense to which defendant is pleading guilty has the following elements:

1. Defendant is an alien and not a citizen of the United States;
2. Defendant was excluded, deported, or removed from the United States; and
3. Defendant thereafter was subsequently found in the United States after knowingly and voluntarily reentering and remaining in the United States, without the Attorney General of the United States or his designated successor, the Secretary of the Department of Homeland Security, having expressly consented to

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1 defendant's reapplication for admission to the  
2 United States.

3 B. ELEMENTS UNDERSTOOD AND ADMITTED - FACTUAL BASIS

4 Defendant has fully discussed the facts of this case with defense  
5 counsel. Defendant has committed each of the elements of the crime,  
6 and admits that there is a factual basis for this guilty plea. The  
7 following facts are true and undisputed:

- 8 1. Defendant is an alien and not a citizen of the  
9 United States;
- 10 2. On or about June 22, 2004, defendant suffered a felony  
11 conviction for Bank Fraud, in violation of 18 United  
12 States Code § 1344, in the United States District  
13 Court, Northern District Of Illinois;
- 14 3. Defendant subsequently was lawfully excluded, deported  
15 and removed from the United States to Mexico on  
16 December 12, 2007; and,
- 17 4. As alleged in the Information, on October 2, 2011,  
18 defendant thereafter was subsequently found in the  
19 United States within the Southern District of  
20 California after knowingly and voluntarily reentering  
21 and remaining in the United States, without the  
22 Attorney General of the United States or his  
23 designated successor, the Secretary of the Department  
24 of Homeland Security, having expressly consented to  
25 defendant's reapplication for admission to the  
26 United States.

19 **III**

20 **PENALTIES**

21 Defendant understands that the crime to which defendant is  
22 pleading guilty carries the following penalties:

- 23 A. A maximum 20 years in prison;
- 24 B. A maximum \$250,000.00 fine;
- 25 C. A mandatory special assessment of \$100.00 per count; and
- 26 D. A term of supervised release of no more than 3 years.  
27 Defendant understands that failure to comply with any of  
28 the conditions of supervised release may result in  
revocation of supervised release, requiring defendant to

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1 serve in prison all or part of the term of supervised  
2 release.

3 IV

4 DEFENDANT'S WAIVER OF TRIAL RIGHTS

5 Defendant understands that this guilty plea waives the right to:

- 6 A. Continue to plead not guilty and require the Government to  
7 prove the elements of the crime beyond a reasonable doubt;  
8 B. A speedy and public trial by jury;  
9 C. The assistance of counsel at all stages of trial;  
10 D. Confront and cross-examine adverse witnesses;  
11 E. Present evidence and to have witnesses testify on behalf of  
12 defendant; and,  
13 F. Not testify or have any adverse inferences drawn from the  
14 failure to testify.

15 V

16 DEFENDANT ACKNOWLEDGES NO PRETRIAL RIGHT TO BE  
17 PROVIDED WITH IMPEACHMENT AND AFFIRMATIVE DEFENSE INFORMATION

18 The Government represents that any information establishing the  
19 factual innocence of defendant known to the undersigned prosecutor in  
20 this case has been turned over to defendant. The Government will  
21 continue to provide such information establishing the factual  
22 innocence of defendant.

23 Defendant understands that if this case proceeded to trial, the  
24 Government would be required to provide impeachment information  
25 relating to any informants or other witnesses. In addition, if  
26 defendant raised an affirmative defense, the Government would be  
27 required to provide information in its possession that supports such  
28 a defense. Defendant acknowledges, however, that by pleading guilty  
defendant will not be provided this information, if any, and defendant  
also waives the right to this information. Finally, defendant agrees

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1 not to attempt to withdraw the guilty plea or to file a collateral  
2 attack based on the existence of this information.

3 VI

4 DEFENDANT'S REPRESENTATION THAT  
5 GUILTY PLEA IS KNOWING AND VOLUNTARY

6 Defendant represents that:

- 7 A. Defendant has had a full opportunity to discuss all the  
8 facts and circumstances of this case with defense counsel  
9 and has a clear understanding of the charges and the  
10 consequences of this plea. Defendant further understands  
11 that the conviction in this case may subject defendant to  
12 various collateral consequences, including but not limited  
13 to deportation, removal or other adverse immigration  
14 consequences; revocation of probation, parole, or  
15 supervised release in another case; none of which will  
16 serve as grounds to withdraw defendant's guilty plea;
- 12 B. No one has made any promises or offered any rewards in  
13 return for this guilty plea, other than those contained in  
14 this agreement or otherwise disclosed to the Court;
- 14 C. No one has threatened defendant or defendant's family to  
15 induce this guilty plea; and
- 16 D. Defendant is pleading guilty because in truth and in fact  
17 defendant is guilty and for no other reason.

17 VII

18 AGREEMENT LIMITED TO  
19 U.S. ATTORNEY'S OFFICE SOUTHERN DISTRICT OF CALIFORNIA

20 This plea agreement is limited to the United States Attorney's  
21 Office for the Southern District of California, and cannot bind any  
22 other federal, state or local prosecuting, administrative, or  
23 regulatory authorities, although the Government will bring this plea  
24 agreement to the attention of other authorities if requested by the  
25 defendant.

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## VIII

APPLICABILITY OF SENTENCING GUIDELINES

Defendant understands the sentence imposed will be based on the factors set forth in 18 U.S.C. § 3553(a). Defendant understands further that in imposing the sentence, the sentencing judge must consult the United States Sentencing Guidelines ("Guidelines") and take them into account. Defendant has discussed the Guidelines with defense counsel and understands that the Guidelines are only advisory, not mandatory, and the Court may impose a sentence more severe or less severe than otherwise applicable under the Guidelines, up to the maximum in the statute of conviction. Defendant understands further that the sentence cannot be determined until a presentence report has been prepared by the U.S. Probation Office and defense counsel and the Government have had an opportunity to review and challenge the presentence report. Nothing in this plea agreement shall be construed as limiting the Government's duty to provide complete and accurate facts to the district court and the U.S. Probation Office.

## IX

SENTENCE IS WITHIN SOLE DISCRETION OF JUDGE

This plea agreement is made pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B). Defendant understands that the sentence is within the sole discretion of the sentencing judge. The Government has not made and will not make any representation as to what sentence defendant will receive. Defendant understands that the sentencing judge may impose the maximum sentence provided by statute, and is also aware that any estimate of the probable sentence by defense counsel is a prediction, not a promise, and is not binding on the Court.

Likewise, the recommendation made by the Government is not binding on

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1 the Court, and it is uncertain at this time what defendant's sentence  
 2 will be. Defendant also has been advised and understands that if the  
 3 sentencing judge does not follow any of the parties' sentencing  
 4 recommendations, defendant nevertheless has no right to withdraw the  
 5 plea.

6 X

7 PARTIES' SENTENCING RECOMMENDATIONS

8 A. SENTENCING GUIDELINE CALCULATIONS

9 Although the parties understand that the Guidelines are only  
 10 advisory and just one of the factors the Court will consider under  
 11 18 U.S.C. § 3553(a) in imposing a sentence, the parties will jointly  
 12 recommend the following Base Offense Level, Specific Offense  
 13 Characteristics, Adjustments and Departures:

- |    |  |                 |
|----|--|-----------------|
| 14 | 1. Base Offense Level                            |                 |
| 15 | [USSG §2L1.2]                                    | 8               |
| 16 | 2. Prior Conviction                              |                 |
| 17 | [USSG § 2L1.2(b)(1)(A)(B)(C)(D)(E)] <sup>1</sup> | +8              |
| 18 | 3. Acceptance of Responsibility                  |                 |
| 19 | [USSG § 3E1.1]                                   | -3 or -2        |
| 20 | 4. Departure for Fast-Track                      |                 |
| 21 | [USSG § 5K3.1]                                   | -2 <sup>2</sup> |

22 B. ACCEPTANCE OF RESPONSIBILITY

23 Notwithstanding paragraph A.3 above, the Government will not  
 24 recommend any adjustment for Acceptance of Responsibility if

25 <sup>1</sup> The parties agree that if, before defendant is sentenced,  
 26 contrary or additional information is discovered concerning  
 27 defendant's criminal history which changes defendant's applicable SOC,  
 28 then the Government may recommend a sentence based upon any such  
 changes.

<sup>2</sup> The Government reserves the right to reduce its recommended  
 departure if defendant does not proceed to sentencing on the first  
 date set by the Court, unless the parties agree to a continuance or  
 sentencing is continued on the Court's own motion.

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1 defendant:

- 2 1. Fails to admit a complete factual basis for the plea
- 3 at the time it is entered; or
- 4 2. Denies involvement in the offense, gives conflicting
- 5 statements about that involvement, or is untruthful
- 6 with the Court or probation officer; or
- 7 3. Fails to appear in court; or
- 8 4. Engages in additional criminal conduct; or
- 9 5. Attempts to withdraw the plea; or
- 10 6. Refuses to abide by any lawful court order.

11 C. ADJUSTMENTS; DEPARTURES; AND SENTENCE REDUCTIONS  
12 UNDER 18 U.S.C. § 3553

13 The parties agree defendant may recommend additional upward or  
14 downward adjustments or departures, including any criminal history  
15 departures under USSG § 4A1.3, or other sentence reductions under 18  
16 U.S.C. § 3553.

17 D. NO AGREEMENT AS TO CRIMINAL HISTORY CATEGORY

18 The parties have **no** agreement as to defendant's Criminal History  
19 Category.

20 E. "FACTUAL BASIS" AND "RELEVANT CONDUCT" INFORMATION

21 The parties agree that the facts in the "factual basis" paragraph  
22 of this agreement are true, and may be considered as "relevant  
23 conduct" under USSG § 1B1.3 and as the nature and circumstances of the  
24 offense under 18 U.S.C. § 3553(a)(1).

25 F. PARTIES' RECOMMENDATIONS REGARDING CUSTODY

26 The government will recommend that defendant be sentenced to the  
27 high end of the advisory guideline range as calculated by the parties  
28 at the time of sentencing, pursuant to this agreement.

G. SPECIAL ASSESSMENT

The parties will jointly recommend that defendant pay a special

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1 assessment in the amount of \$100.00 per felony count of conviction,  
2 to be paid forthwith at time of sentencing. The special assessments  
3 shall be paid through the office of the Clerk of the District Court  
4 by bank or cashier's check or money order made payable to the "Clerk,  
5 United States District Court."

6 H. STIPULATION TO REMOVAL

7 If defendant is not a United States citizen or national, either  
8 before or immediately following sentencing, defendant agrees to an  
9 order of removal from the United States entered by Executive Office  
10 for Immigration Review or authorized Department of Homeland Security  
11 official. Defendant understands that defendant will not be removed  
12 until defendant has served any criminal sentence imposed in this or  
13 any other case. Defendant further waives any right to appeal, reopen  
14 or challenge the removal order, in this or any subsequent case,  
15 administrative, civil or criminal.

16 XI

17 DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK

18 In exchange for the Government's concessions in this plea  
19 agreement, defendant waives, to the full extent of the law, any right  
20 to appeal or to collaterally attack the conviction and sentence,  
21 except a post-conviction collateral attack based on a claim of  
22 ineffective assistance of counsel, unless the Court imposes a  
23 custodial sentence above the high end of the guideline range  
24 recommended by the Government pursuant to this agreement at the time  
25 of sentencing. If the custodial sentence is greater than the high end  
26 of that range, defendant may appeal, but the Government will be free  
27 to support on appeal the sentence actually imposed. If defendant  
28 believes the Government's recommendation is not in accord with this

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1 plea agreement, defendant will object at the time of sentencing;  
2 otherwise the objection will be deemed waived.

3 If defendant breaches this plea agreement, at any time, in any  
4 way, including but not limited to appealing or collaterally attacking  
5 the conviction or sentence, the Government may prosecute defendant for  
6 any counts, including those with mandatory minimum sentences,  
7 dismissed or not charged pursuant to this plea agreement.  
8 Additionally, the Government may use any factual admissions made by  
9 defendant pursuant to this plea agreement in any such prosecution.

10 XII

11 CRIMES AFTER ARREST OR BREACH OF THE  
12 AGREEMENT WILL PERMIT THE GOVERNMENT TO  
RECOMMEND A HIGHER SENTENCE OR SET ASIDE THE PLEA

13 This plea agreement is based on the understanding that, prior to  
14 defendant's sentencing in this case, defendant has not committed or  
15 been arrested for any offense not known to the Government prior to  
16 defendant's sentencing. This plea agreement is further based on the  
17 understanding that defendant has committed no criminal conduct since  
18 defendant's arrest on the present charges, and that defendant will  
19 commit no additional criminal conduct before sentencing. If defendant  
20 has engaged in or engages in additional criminal conduct during this  
21 period, or breaches any of the terms of any agreement with the  
22 Government, the Government will not be bound by the recommendations  
23 in this plea agreement, and may recommend any lawful sentence. In  
24 addition, at its option, the Government may move to set aside the  
25 plea.

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27 //

28 //

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XIII

ENTIRE AGREEMENT

This plea agreement embodies the entire agreement between the parties and supersedes any other agreement, written or oral.

XIV

MODIFICATION OF AGREEMENT MUST BE IN WRITING

No modification of this plea agreement shall be effective unless in writing signed by all parties.

XV

DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT

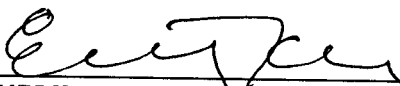
By signing this agreement, defendant certifies that defendant has read it (or that it has been read to defendant in defendant's native language). Defendant has discussed the terms of this agreement with defense counsel and fully understands its meaning and effect.


XVI

DEFENDANT SATISFIED WITH COUNSEL

Defendant has consulted with counsel and is satisfied with counsel's representation.

LAURA E. DUFFY  
United States Attorney

  
\_\_\_\_\_  
EMILY J. KEIFER  
Assistant U.S. Attorney

  
\_\_\_\_\_  
ROSEMARIE MALIEKEL  
Defense Counsel

IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR UNDER PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS" SECTION ABOVE ARE TRUE.

12/4/11  
\_\_\_\_\_  
DATED

Carlos Bravo-A  
\_\_\_\_\_  
CARLOS BRAVO-AVENDANDO  
Defendant